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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 USSC HOLDINGS CORP., a Nevada
9 corporation, MUSIC CITY FORE CO.,
10 a Nevada corporation, ROBERT J.
11 BUCKLEY, an individual,
STEVE PALADINO, an individual,

12 Plaintiffs,

13 v.

14 TK PRODUCTS, LLC, an Oregon limited
liability company, KURT O' BAUER, an
individual, TRENT C. FARRER,
an individual,

15 Defendants.
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3:16-cv-00398-RCJ-WGC

ORDER

17 Before the court is Plaintiffs' Motion to Seal. (ECF No. 75.) Plaintiffs seek an order sealing the
18 exhibit accompanying their pending motion for leave to file a first amended complaint.

19 "Historically, courts have recognized a general right to inspect and copy public records and
20 documents, including judicial records and documents." *See Kamakana v. City and County of Honolulu*,
21 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted). "Throughout our
22 history, the open courtroom has been a fundamental feature of the American judicial system. Basic
23 principles have emerged to guide judicial discretion respecting public access to judicial proceedings.
24 These principles apply as well to the determination of whether to permit access to information contained
25 in court documents because court records often provide important, sometimes the only, bases or
26 explanations for a court's decision." *Oliner v. Kontrabecki*, 745 F.3d 1024, 1025 (9th Cir. 2014)
27 (quoting *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983)).

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1 Documents that have been traditionally kept secret, including grand jury transcripts and warrant
2 materials in a pre-indictment investigation, come within an exception to the general right of public
3 access. *See Kamakana*, 447 F.3d at 1178. Otherwise, “a strong presumption in favor of access is the
4 starting point.” *Id.* (internal quotation marks and citation omitted). “The presumption of access is ‘based
5 on the need for federal courts, although independent—indeed, particularly because they are
6 independent—to have a measure of accountability and for the public to have confidence in the
7 administration of justice.’” *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096 (9th
8 Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016) (quoting *United States v. Amodeo (Amodeo II)*,
9 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley Broad Co. v. U.S. Dist. Court-D. Nev.*, 798 F.2d 1289, 1294
10 (9th Cir. 1986)).

11 There are two possible standards a party must address when it seeks to file a document under
12 seal: the compelling reasons standard or the good cause standard. *See Center for Auto Safety*, 809 F.3d
13 at 1096-97. Under the compelling reasons standard, “a court may seal records only when it finds ‘a
14 compelling reason and articulate[s] the factual basis for its ruling, without relying on hypothesis or
15 conjecture.” *Id.* (quoting *Kamakana*, 447 F.3d at 1179). “The court must then ‘conscientiously balance
16 [] the competing interests of the public and the party who seeks to keep certain judicial records secret.’”
17 *Id.* “What constitutes a ‘compelling reason’ is ‘best left to the sound discretion of the trial court.’” *Id.*
18 (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599 (1978)). “Examples include when a court
19 record might be used to ‘gratify private spite or promote public scandal,’ to circulate ‘libelous’
20 statements, or ‘as sources of business information that might harm a litigant’s competitive standing.’”
21 *Id.* (quoting *Nixon*, 435 U.S. at 598-99).

22 *Center for Auto Safety* described the good cause standard, on the other hand, as the exception to
23 public access that had been applied to “sealed materials attached to a discovery motion unrelated to the
24 merits of a case.” *Id.* (citing *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213-
25 14 (9th Cir. 2002)). “The ‘good cause language comes from Rule 26(c)(1), which governs the issuance
26 of protective orders in the discovery process: ‘The court may, for good cause, issue an order to protect
27 a party or person from annoyance, embarrassment, oppression, or undue burden or expense.’” *Id.* (citing
28 Fed. R. Civ. P. 26(c)).

1 The Ninth Circuit has clarified that the key in determining which standard to apply in assessing
2 a motion for leave to file a document under seal is whether the documents proposed for sealing
3 accompany a motion that is “more than tangentially related to the merits of a case.” *Center for Auto*
4 *Safety*, 809 F.3d at 1101 (9th Cir. 2016). If that is the case, the compelling reasons standard is applied.
5 If not, the good cause standard is applied.

6 Here, Plaintiffs seek to file under seal an exhibit accompanying their motion for leave to file an
7 amended complaint. They represent that the exhibit contains the operative agreement between the parties
8 and other information which the parties have deemed confidential pursuant to a protective order. The
9 motion for leave to amend does not go to the merits of the action itself, but to what claims the Plaintiffs
10 will be asserting. Therefore, the “good cause” standard applies.

11 The exhibit attaches the agreement and references other confidential information subject to the
12 protective order entered in this case. Rule 26 allows the court to protect “trade secret[s] or other
13 confidential research, development or commercial information[.]” As such, the court finds that good
14 cause exists to seal the exhibit. Therefore, Plaintiffs’ motion (ECF No. 75) is **GRANTED**.

15 **IT IS SO ORDERED.**

16 DATED: July 7, 2017.

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18 WILLIAM G. COBB
19 UNITED STATES MAGISTRATE JUDGE
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